IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.P. No.159 of 2006
Date of decision:22.01.2009

In the matter of :-

M/s Punjab Wireless Systems Ltd. (in Liqn).

Union of India of India through Assistant Commissioner, Central Excise, Central Excise Division, Mohali. ..... Petitioner

Vs.

M/s Punjab Wireless System Ltd., through its Official Liquidator, 2nd Floor, SCO No.9, Madhya Marg, Sector-26, Chandigarh.

.....Respondent

Present: Ms. Ranjana Sahi, Advocate
for the petitioner.

Mr. Puneet Kansal, Advocate for OL.

CORAM: HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

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K.KANNAN, J. (ORAL)

1. The claim by the Union of India is for release of the amount to the tune of Rs.7,42,41,168/- plus interest till the date of realization in priority over all other dues. The claim is made in the hands of the Official Liquidator, who has, on the orders of the Court, sold the goods originally confiscated by the Customs Department and the sale proceeds is lying with the Official Liquidator.

2. The contention of the learned counsel is that the goods had been imported by the company-in-liquidation in the year 1998 and for non-payment of duty, their goods had been detained by the Customs Department.

The Company went into liquidation in the year 2001 and an application was moved before the Company Court by the Official Liquidator in C.P. No.86 of 2001 for direction to secure the goods kept under the custody of the Customs. The Company Court ordered on 04.03.2005 for the release of goods from the custody of the Customs Department and directed the O.L. to take over the assets. In the appeal filed before a Division Bench in Company Appeal No.1 of 2006, the Customs Department placed the contention that the right to recover duty by way of selling the good could not be defeated at the instance of the Company Court. Holding that the Customs Department did not have a right under Section 142 of the Customs Act to have a statutory power to control over the custody of goods, the appeal filed by the Union of India was dismissed affirming the decision of the Company Court.

3. The present petition was again moved on behalf of the Union of India contending that the Company in winding up ought not to have any better right over the goods than if it had been wound up at all. If the Crown debt would have the first charge, the amount that would be available for distribution by the O.L. could be reckoned only after the claim of the Union of India was settled on priority basis. In fact, the counsel would argue that the claim of the Union of India should be entertained outside the purview of Section 529-A of the Companies Act. The Government had a right lien over the goods and the effect of the order passed already was only to cede the lien in favour of the O.L. for temporary custody, but its own right to recover amount which was due, was not lost by the transfer of goods from its custody to the Official Liquidator by the orders of the Division Bench.

4. The contentions which are now raised are contentions which have been taken up before the Company Court as well as before the Division Bench and the priorities of claim which had been urged, had been rejected.

The counsel appearing for O.L. also brings to my attention the deicision of a Full Bench in ***UTI Bank Ltd. Vs. Dy. Commissioner of Central Excise and another 2007 135 329*** which dealt with the issue of the priority of Government dues over secured creditors and while paraphrasing the reasonings found in the judgment, the Full Bench of the Madras High Court concluded:-

"(i) Generally, the dues to Government, i.e., tax, duties, etc. (Crown's debts) get priority over oridinary debts.

(ii) Only when there is a specific provision in the statute claiming 'first charge' over the property, the Crown's debt is entitled to have priority over the claim of others.

(iii) Since there is no specific provision claiming 'first charge' in the Central Excise Act and the Customs Act, the claim of the Central Excise Department cannot have precedence over the claim of secured creditor viz., the petitioner-bank.

(iv) In the absence of such specific provision in the Central Excise Act as well as in the Customs Act, we hold that the claim of secured creditor will prevail over Crown's debts.

It is made clear from our above conclusion and of the fact that the petitioner-bank being a secured creditor, the first respondent, the Deputy Commissioner of Central Excise Department is not entitled to bring the property, viz., Plot No.55, Ambattur Industrial Estate, Ambattur, Chennai-600 058, into auction for their dues payable by the

borrower company, viz., M/s Sumeet Research and Holdings Pvt. Ltd. It is further made clear that after clearance of the petitioner's debt, the first respondent is free to proceed further if any property is available."

5. I am in full agreement with the reasonings as found in the decision of the Full Bench and bound by the decision of the Division Bench of this Court in Company Appeal No.1 of 2006 and therefore, Union of India will not be entitled to seek for any payment out of sale proceeds on priority. The claim of the Government be considered at appropriate time along with others under Section 530 of the Companies Act.

(K. KANNAN)
JUDGE

January 22, 2009
Pankaj*